

ENTERED

May 23, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONJOSE MANUEL VILLARREAL,
TDCJ # 01976024,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 4:19-0650

MEMORANDUM OPINION AND ORDER

On March 30, 2020, the Court denied the habeas petition filed by state inmate Jose Manuel Villarreal (Dkt. 14; Dkt. 15). Villarreal appealed. On July 23, 2021, the appellate court denied Villarreal a certificate of appealability (Dkt. 35). On May 5, 2022, Villarreal filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(1) (Dkt. 36).

Rule 60(b)(1) permits a court to relieve a party from a final judgment in the case of “mistake, inadvertence, surprise, or excusable neglect.” Rule 60(b) is an uncommon means for relief, and “final judgments should not be lightly reopened.” *Lowry Dev., L.L.C. v. Groves & Associates Ins., Inc.*, 690 F.3d 382, 385 (5th Cir. 2012) (cleaned up). A motion for relief under Rule 60(b)(1) “*must* be made . . . no more than a year after the entry of the judgment or order or the date of the proceeding” being challenged. FED. R. CIV. P. 60(c)(1) (emphasis added).

In this case, Villarreal seeks relief under Rule 60(b)(1) and argues that the Court erred when determining that two of his habeas claims were waived by his guilty plea (Dkt. 36, at 2). Because Villarreal filed his motion more than two years after the judgment he challenges, relief under Rule 60(b)(1) is not available. *See* FED. R. CIV. P. 60(c)(1). Even if the Court were to consider his motion under Rule 60(b)(6), he makes no showing that his motion was made “within a reasonable time” or of any good cause for the delay. *See In re Edwards*, 865 F.3d 197, 208 (5th Cir. 2017); *Smith v. Kukua*, 487 F. App’x 145, 146 (5th Cir. 2012).

Villarreal’s motion for relief under Rule 60(b)(1) (Dkt. 36) therefore is **DENIED**.

The Clerk will provide a copy of this order to the parties.

SIGNED at Houston, Texas, on May 23, 2022.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE